Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

November 14, 2013

Norm Benton, Treatment Plant Operator
Wastewater Treatment Plant
City of Grass Valley
125 E. Main Street
Grass Valley, CA 95945

Timothy M. Kiser, P.E.
Public Works Director/City Engineer
Department of Public Works
City of Grass Valley
125 E. Main Street
Grass Valley, CA 95945

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Heads of Agency/Operations:

NOTICE

The Clean Water Act ("CWA" or "Act") requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

California River Watch ("River Watch") hereby places the City of Grass Valley, hereinafter referred to as "the Discharger" on notice, that following the expiration of 60 days from the date of this Notice, River Watch intends to bring suit in the U.S. District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402 pursuant to CWA § 301(a), and consistent with the Code of Federal Regulations, and the

Regional Water Quality Control Board, Central Valley Region, Water Quality Control Plan ("Basin Plan") as exemplified by the violations of permit conditions or limitations in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permit.

INTRODUCTION

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of enumerated statutory provisions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA §301(a), 33 U.S.C. §1311(a) prohibition, such that violation of a permit limit places a polluter in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, as defined under 33 U.S.C. §1365(f) and elsewhere within the Act or enumerating state and federal statutes and limitations.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. *See* 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, Central Valley Region ("RWQCB").

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The specific standard, limitation, or order alleged to have been violated.

River Watch has identified the NPDES Permit of the City of Grass Valley for the Grass Valley Wastewater Treatment Plant and specifically identified the applicable permit standard, limitation or condition being violated further in this Notice. A violation of the NPDES permit is a violation of the CWA.

2. *The activity alleged to constitute a violation.*

Most often, the NPDES Permit limitations being violated are self-explanatory and an examination of the language of the Permit is sufficient to inform the Discharger, especially since the Discharger is responsible for complying with that Permit condition. In addition, River Watch has set forth narratives in this Notice describing with particularity the activities leading to violations, and has incorporated by reference the Discharger's own records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding its NPDES Permit, compliance with that Permit and any other information designed to inform the Discharger or the public.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations identified in this Notice is the City of Grass Valley and its Public Works Department as owner and operator of the Grass Valley Wastewater Treatment Plant and its related collection system, identified in this Notice as the Discharger, as well as those of the Discharger's employees responsible for compliance with the Discharger's NPDES Permit.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the Discharger's NPDES Permit and also in records created and/or maintained by or for the Discharger which relate to the Grass Valley Wastewater Treatment Plant and related activities as further described in this Notice.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined both RWQCB files and the Discharger's records with respect to the Grass Valley Wastewater Treatment Plant for the period from November 14, 2008 through November 14, 2013. The range of dates covered by this Notice is from November 14, 2008 through November 14, 2013. River Watch may from time to time update this Notice to include violations of the CWA by the Discharger which occur after the range of dates currently covered by this Notice. Some violations are continuous, and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is California River Watch, referred to herein as "River Watch," 290 S. Main Street, #817, Sebastopol, CA 95472, a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools and tributaries. River Watch may be contacted via email: US@ncriverwatch.org or through its attorneys.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed as follows:

Jack Silver, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Email: lhm28843@sbcglobal.net

THE DISCHARGER'S OPERATIONS

The Discharger owns and operates the Grass Valley Wastewater Treatment Plant ("the Plant") and its associated wastewater collection system consisting of approximately 2.7 miles of pressure lines and 61.5 miles of gravity sewer main. The discharge of treated wastewater from the Plant is regulated under Order No. R5-2009-0067, NPDES Permit CA0079898. The discharge was formerly regulated under Order No. R5-2003-0089. The Discharger provides sewerage service for a population of approximately 12,100 in the City of Grass Valley, and also treats water from an abandoned mine portal (Drew Tunnel). The Plant is a tertiary wastewater treatment plant with a dry weather design capacity of 2.78 mgd. The Plant discharges into Wolf Creek, a tributary to Bear River.

The Discharger's NPDES Permit contains several discharge prohibitions related to sewer system overflows ("SSOs"). Discharge Prohibition A of the Permit prohibits the discharge of wastewater at a location or in a manner different from that described in the Findings. Discharge Prohibition B prohibits the by-pass or overflow of wastes to surface waters, with specified exceptions. Discharge Prohibition C prohibits discharges which create a nuisance as defined by California Water Code § 13050. A SSO can violate several of these prohibitions at once. Violations of the NPDES Permit are violations of the CWA.

The Discharger's ageing collection system has historically experienced high inflow and infiltration (I/I) during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains which are connected to adjacent surface waters – all waters of the United States. As recorded in California Integrated Water Quality System's ("CIWQS") Public SSO Reports, the Discharger's collection system has experienced twenty seven (27) SSOs between November 14, 2008 and November 14, 2013, with a combined volume of 93,264 gallons – 89,555 gallons of which reached surface waters. As an example, on November 4, 2012, a spill occurred at 11442 Slate Creek Road, Grass Valley. The total estimated volume of the spill was 13,440 gallons, of which 13,290 was estimated to have reached Irrigation Pond which feeds a channel to Deer Creek. Also, on December 2, 2012, at 450 Mill Street, Grass Valley, a spill took place which was not addressed until the following day, when the Discharger was notified. Some 1,800 gallons were estimated to have spilled reaching Wolf Creek. The investigation was not completed until ten (10) days after the spill.

River Watch contends the Discharger has a history of non-compliance with the SSO reporting requirements of the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing operation of sanitary sewer systems. The Discharger is a permittee under the Statewide WDR which requires that sewer system operators report SSOs to the CIWQS, and include in that reporting an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water. The Discharger's NPDES Permit requires compliance with all provisions of the Statewide WDR. The Discharger's field reports generally do not indicate what method was used to estimate the total volume of the spill, which calls into question the estimates of volume recovered and volume which reached a surface water. In the case of both SSOs previously mentioned, the operator arrival time is listed as the day after the spill. The report for the December 2, 2012 event mentions that the Discharger did not become aware of the spill until the following day. In the case of the SSO event on Slate Creek Road, however, it is not clear whether the response was delayed a day or the information was entered incorrectly.

The Statewide WDR requires the Discharger to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and the impact of the release. According to public records, the Discharger is not adequately sampling every SSO

which reaches surface waters. In the instances for which the Discharger does conduct sampling, testing often exists for only a fraction of the relevant toxins.

The Discharger's internal reports indicate discharges to surface waters which are not reported to CIWQS. The Discharger completely ignores SSOs due to exfiltration that reach surface waters. The entire system has not been inspected by means of closed circuit television. For a significant portion of the collection system, the Discharger has no idea of its condition or the extent of exfiltration. These sections of the system are old and in need of repair. Untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., into ground water which is hydrologically connected to surface waters. Evidence indicates extensive exfiltration from lines within two hundred (200) feet of a surface water. Evidence of exfiltration can be found in mass balance data, inflow and infiltration data, video inspection, and tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. River Watch alleges that such discharges are continuous wherever ageing, damaged, structurally defective sewer lines in the Discharger's collection system are located adjacent to surface waters including Deer Creek, Wolf Creek, Bear River and its tributaries. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. Chronic failures in the collection system pose a substantial threat to public health. Exfiltration from the Discharger's collection system is a violation of its NPDES permit and the CWA.

The Discharger fails to adequately mitigate the impacts of SSOs. The Statewide WDR mandates that "the Enrollee shall take all feasible steps to contain and mitigate the impacts of an SSO" (Statewide WDR Provision D.3, pg. 7). The EPA Report To Congress on the Impacts of SSOs identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. There are numerous critical habitat areas within areas of SSOs by the Discharger. There is no record of the Discharger performing any analysis of the impacts of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

As stated previously, Discharge Prohibition C as set forth in the Discharger's NPDES Permit prohibits the discharge of wastes that create a nuisance as defined by California Water Code § 13050. The term "nuisance" is defined as anything which meets the following requirements: 1) "is injurious to health, or is indecent or offensive to the senses . . . so as to interfere with the comfortable enjoyment of life or property"; 2) "affects at the same time an entire community or neighborhood, or any considerable number of persons"; and, 3) "occurs during, or as a result of, the treatment or disposal of wastes."

Wolf Creek is a tributary to Bear River. Bear River and its tributaries have many beneficial uses as defined in the RWQCB's Basin Plan. SSOs reaching Bear River and its tributaries cause prohibited pollution by unreasonably affecting the beneficial uses of these waters. The Discharger is also required by its NPDES Permit to comply with narrative standards as set forth in the Basin Plan, and used when testing by numeric standards would be inadequate or impractical. Narrative standards include the following:

1) Waters shall not contain taste or odor producing substances in concentrations that impart undesirable tastes or odors to fish flesh;

2) Waters shall not contain floating material in concentrations that cause nuisance or affect beneficial uses;

3) The pH shall not change within 0.5 units of the range needed for COLD or WARM beneficial uses, such as cold water habitat for fish;

4) The bacteriological quality of waters shall not be degraded beyond natural background levels; and,

5) Natural receiving water temperatures shall not be altered unless allowed by the RWQCB

River Watch has found nothing in the public record to demonstrate the Discharger has monitored for and complied with these narrative standards. River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around Bear River and its tributaries. River Watch members residing in the area of the Plant and the surrounding watershed, have a vital interest in bringing the Discharger's operations at the Plant and associated collection system into compliance with the CWA.

REMEDIAL MEASURES REQUESTED

1. DEFINITIONS

A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains; manhole inspections for structural defects; and, inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the

National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.

B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within two hundred (200) feet of surface waters.

C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located within two hundred (200) feet of surface waters, including gutters, canals and storm drains which discharge to surface waters.

D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

5 – Most significant defect
4 – Significant defect
3 – Moderate defect
2 – Minor to moderate defect
1 – Minor defect

2. REMEDIAL MEASURES

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with its NPDES permit and the Basin Plan, and reflect the biological impacts of the Discharger's ongoing non-compliance with the CWA:

A. SEWAGE COLLECTION SYSTEM INVESTIGATION AND REPAIR

- The repair or replacement, within two (2) years, of all sewer lines in the Discharger's sewage collection system located within two hundred (200) feet from surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within the past five (5) years and were rated as Significantly Defective.

- Within two (2) years, the completion of Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

- Within two (2) years after completion of the Surface Water Condition Assessment above, the Discharger will:

  » Repair or replace all sewer lines which have been found to be Significantly Defective;

  » Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the Discharger's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced;

  » Sewer pipe segments that contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment shall be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the Discharger determines that the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the Discharger shall complete such repair or replacement within two (2) years after the last CCTV cycle.

- Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the Discharger shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within three (3) years of the rating determination.

- Provision in the Discharger's Capital Improvements Plan to implement a program of the Condition Assessment of all sewer lines at least every five (5) years. Said program to begin one (1) year following the Full Condition Assessment described above.

B. SSO REPORTING AND RESPONSE

- Modification of the Discharger's Backup and SSO Response Plan to include the method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.

- For Category I Spills, creation of a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not

been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.

- Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO; or other photographic evidence that may aid in establishing the spill volume.

- Water quality sampling and testing to be required whenever it is estimated that fifty (50) gallons or more of untreated or partially treated waste water enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli and a CAM-17 toxic metal analysis. The Discharger shall collect and test samples from three (3) locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the Discharger will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the non-structural defect.

- Creation of website capacity to track information regarding SSOs; or, in the alternative, the creation of a link from the Discharger's website to the CIWQS SSO Public Reports. Notification to be given by the Discharger to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

- Performance of human marker sampling on creeks, rivers, wetlands and areas of Wolf Creek and Bear River adjacent to sewer lines to test for sewage contamination from exfiltration.

C. LATERAL INSPECTION/REPAIR PROGRAM

- Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

» Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within twenty (20) years prior to the transfer;

» The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

» A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, and (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3)years;

» Upon replacement or repair of any part of the sewer lateral;

» Upon issuance of a building permit with a valuation of $25,000.00 or more;

» Upon significant repair or replacement of the main sewer line to which the lateral is attached.

VIOLATIONS

River Watch contends that from November 14, 2008 through November 14, 2013, the Discharger violated the requirements of its NPDES Permit, the Basin Plan and the Code of Federal Regulations, as those requirements are referenced in the NPDES Permit, with respect to the Plant and associated collection system. Said violations are evidenced in the Discharger's Self Monitoring Reports, testing data compiled in compliance with the NPDES Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or in the Discharger's possession, and as evidenced by unpermitted discharges due to failures in the collection system. River Watch contends these violations are continuing.

The violations, include, but are not limited to, the following categories in the NPDES Permit:

Discharge Prohibitions

Violations	**Description**
1825	Collection system subsurface discharge caused by underground exfiltration – an event in which untreated sewage is discharged from the collection system prior to reaching the Plant. Underground discharges are alleged to have been continuous throughout the period from November 14, 2008 through November 14, 2013.

Order No. R5-2003-0089, Discharge Prohibition A.1: "Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited."

Order No. R5-2003-0089, Discharge Prohibition A.2: "The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Standard Provision A.13."

Order No. R5-2009-0067, Discharge Prohibition III.A: "The discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited".

Order No. R5-2009-0067, Discharge Prohibition III. B: "The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Federal Standard Provisions I.G and I.H (Bypass and Upset)"

Supporting evidence of these violations exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the Plant reported in Self Monitoring Reports, video inspection of the collection system and testing of waterways adjacent to sewer lines, creeks, and wetlands for human markers, nutrients, pathogens and other constituents indicating sewage contamination.

27 SSOs – as evidenced in the CIWQS Interactive Public SSO Reports, including those discussed above, and unrecorded surface overflows witnessed by local residents.

Order No. R5-2003-0089, Discharge Prohibition A.1: "Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited."

Order No. R5-2003-0089, Discharge Prohibition A.2: "The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Standard Provision A.13."

Order No. R5-2003-0089, Discharge Prohibition A.3: "Neither the discharge nor its treatment shall create a nuisance as defined in Section 13050 of the California Water Code."

Order No. R5-2009-0067, Discharge Prohibition III.A: "The discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited."

Order No. R5-2009-0067, Discharge Prohibition III. B: "The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Federal Standard Provisions I.G and I.H (Bypass and Upset)"

Order No. R5-2009-0067, Discharge Prohibition III. C: "Neither the discharge nor its treatment shall create a nuisance as defined in Section 13050 of the California Water Code."

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the community of Grass Valley in Nevada County. These members use the affected watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, and their use and enjoyment of these natural resources is specifically impaired by the Discharger's violations of the CWA as alleged in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations identified in this Notice.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested that discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

Jack Silver

JS:lhm

cc: Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Pamela Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Dr. / Suite 200
Rancho Cordova, CA 95670

City Council
City of Grass Valley
125 E. Main Street
Grass Valley, CA 95945